

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

March 22, 2011

In the Matter of S. R. RETZLER, Minor.

No. 299500

Macomb Circuit Court

Family Division

LC No. 2007-000674-NA

In the Matter of S. R. Retzler, Minor.

No. 299501

Macomb Circuit Court

Family Division

LC No. 2007-000674-NA

Before: WILDER, P.J., and SAAD and DONOFRIO, JJ.

PER CURIAM

Respondent A. Turnquist appeals as of right in Docket No. 299500, and respondent S. Retzler appeals as of right in Docket No. 299501, from the trial court's order terminating their parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i) (conditions that led to the adjudication continue to exist), (g) (failure to provide proper care and custody), and (j) (reasonable likelihood child will be harmed if returned to the parent's home). We affirm.

I. DOCKET NO. 299500

Respondent Turnquist correctly observes that a parent “has a fundamental liberty interest ‘in the care, custody, and management’ of [her] child that is protected by the Fourteenth Amendment of the United States Constitution.” *In re Rood*, 483 Mich 73, 91; 763 NW2d 587 (2009) (citations omitted). However, that right is not absolute, and the state may intervene to protect the welfare of a child, provided the parent is afforded due process. See *In re MU*, 264 Mich App 270, 282; 690 NW2d 495 (2004). A court may terminate a parent's rights to a child if a statutory ground for termination is established by clear and convincing evidence, and the court finds that termination is in the child's best interests. MCL 712A.19b(3) and (5); *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000). This Court reviews “for clear error a trial court's factual findings as well as its ultimate determination that a statutory ground for termination of parental rights has been proved by clear and convincing evidence.” *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010); MCR 3.977(K). A finding is clearly erroneous if, despite there being some

evidence to support it, “the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made.” *Id.*, quoting *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

In this case, respondent Turnquist does not explain how her constitutional right to due process was violated. Further, the record discloses that the trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence. The primary issue in this case was respondent Turnquist’s history of substance abuse. The child tested positive for exposure to cocaine at his birth in October 2004, and was removed from respondent Turnquist’s care in December 2007, because she was using cocaine in the child’s presence. Despite receiving services from petitioner, respondent Turnquist was never able to successfully resolve her substance abuse problem. She missed several drug screens, often supplied diluted screens, and continued to test positive for illegal substances, including throughout the reporting period from February to April 2010. She did not submit any drug screens after April 2010. Because respondent Turnquist was unable to overcome her substance abuse problem despite receiving services for more than two years, the trial court did not clearly err in finding that the conditions that led to the adjudication continued to exist and were not reasonably likely to be rectified within a reasonable time. MCL 712A.19b(3)(c)(i).

Further, the evidence showed that in addition to her substance abuse, respondent Turnquist failed to comprehend the child’s special needs or demonstrate that she could manage his needs if he were in her care. She denied that he had any emotional or behavioral problems, despite clear evidence to the contrary, and she continually acted in ways that aggravated his condition. She completed parenting classes and an intensive in-home parenting service, but failed to demonstrate that she benefitted from those services. The trial court did not clearly err in finding that, given respondent Turnquist’s unresolved substance abuse problem and her other parenting deficiencies, there was no reasonable likelihood that she would be able to provide proper care and custody within a reasonable time, and that the child was reasonably likely to be harmed if returned to her home. MCL 712A.19b(3)(g) and (j).

Lastly, the record does not support respondent Turnquist’s argument that petitioner failed to make reasonable efforts to reunify her with her child. Petitioner offered services tailored to respondent Turnquist’s problems with substance abuse, mental illness, and instability. She was referred for substance abuse treatment, parenting classes, an in-home parenting service, counseling, and psychological and psychiatric evaluations. She was also offered supervised and unsupervised visitation with the child to allow her to work on her parenting skills. However, she failed to benefit from these services. It is not enough to merely go through the motions of completing a treatment plan; the parent must also benefit from the services offered to become able to provide safe and proper custody of children. *In re Gazella*, 264 Mich App 668, 676; 692 NW2d 708 (2005), superseded by statute on other grounds *In re Hansen*, 285 Mich App 158, 163; 774 NW2d 698 (2009), vacated by 486 Mich 1037; 783 NW2d 124 (2010). The trial court did not err in terminating respondent Turnquist’s parental rights to the child.

II. DOCKET NO. 299501

Initially, we reject respondent Retzler’s attempt to challenge the trial court’s exercise of jurisdiction over the child on the basis of alleged procedural violations at the original preliminary

hearing. Respondent Retzler did not challenge the trial court's exercise of jurisdiction in a direct appeal from the initial dispositional order. See MCR 3.993(A)(1). Accordingly, he cannot now collaterally attack the trial court's exercise of jurisdiction in this appeal from the termination decision. *In re Hatcher*, 443 Mich 426, 444; 505 NW2d 834 (1993); *In re SLH, AJH, & VAH*, 277 Mich App 662, 668-669; 747 NW2d 547 (2008); *In re Gazella*, 264 Mich App at 679-680.

Next, the record does not support respondent Retzler's argument that the trial court violated MCR 2.004 by denying him the right to participate in proceedings while he was incarcerated. First, that rule applies to a parent who is incarcerated under the jurisdiction of the Michigan Department of Corrections. Here, the record indicates that Retzler was incarcerated briefly in the Macomb County Jail. There is no indication that he was ever in the custody of the Department of Corrections. Furthermore, unlike the respondent in *In re Mason*, 486 Mich 142, respondent Retzler was not denied the opportunity to participate in services or to attend hearings because of his brief incarceration. Indeed, he attended most of the hearings, including the termination hearing. He failed to attend a review hearing on August 14, 2008, but the record indicates that he was absent because he had enrolled in a rehabilitation program. The record also indicates that he was absent from a hearing on June 11, 2009, but it is not clear whether he was incarcerated at that time. Regardless, the record clearly indicates that respondent Retzler had ample opportunity to attend court hearings and to participate in a treatment plan. Moreover, the trial court did not terminate respondent Retzler's parental rights for reasons related to his brief incarceration. Accordingly, there is no merit to this issue.

Next, the trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence. The evidence showed that respondent Retzler was unable to resolve his serious substance abuse problem. His repeated attempts at substance abuse treatment were always followed by relapses. Considering respondent Retzler's several failed attempts to overcome his substance abuse problem, the trial court did not clearly err in finding that this condition had not been resolved and was not reasonably likely to be rectified within a reasonable time. MCL 712A.19b(3)(c)(i). Furthermore, the evidence also showed that respondent Retzler refused to acknowledge the severity of the child's fragile emotional condition and refused to modify his own behavior to accommodate the child's needs, causing the child to experience additional emotional outbursts. The trial court did not clearly err in finding that there was no reasonable likelihood that respondent Retzler would be able to provide proper care and custody within a reasonable time, or in finding that the child was reasonably likely to be harmed if returned to respondent Retzler's home. MCL 712A.19b(3)(g) and (j).

Finally, the trial court did not clearly err in its evaluation of the child's best interests. A psychological evaluation indicated that the child was a fragile child who required absolute consistency. Respondent Retzler failed to demonstrate that he was able to provide that consistency. Further, the child showed a pattern of unstable behavior following visits with respondent Retzler, and the child's behavior improved when visitation ended. The trial court did not clearly err in finding that termination of respondent Retzler's parental rights was in the

child's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich at 356-357.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Henry William Saad
/s/ Pat M. Donofrio